IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Special Appeal No. 94 of 2004

Date of decision :- 11-8-2006

A.F.R. (Approved for reporting)

Not approved for reporting

Date :- 11-8-2006 Initials of Judge

Note :- Bench Reader will attach this at the of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Special Appeal NO. 94 of 2004

Jagat Singh son of Sowan Singh,R/o village Purvi Bans Khera (Golapar), Tehsil Haldwani District Nainital.

…… Appellant.

Versus

1. The Director of Education (Secretary) U.P. at Allahabad.
2. The District Magistrate Dehradun.
3. The District Inspector of Schools, Dehradun.
4. The Principal Government Intermediate College, Quansi, district Dehradun.

…… Respondents.

Mr. Manoj Tiwari, learned counsel for the appellant.
Learned Standing counsel for the respondents.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

JUDGMENT

Per:- Hon'ble J.C.S. Rawat, J.

1. This special Appeal under Chapter VIII rule 5 of the High Court Rules has been preferred against the judgment and order dated 02.07.2001 passed by the learned single Judge in Civil Writ Petition No.1691 of 2001 (S/S)- Ram Dhari Bharti and others Vs. The Director of Education (Secondary) U.P. at Allahabad and others whereby the learned single Judge dismissed the petition.

2. We have heard learned counsel for both the parties and perused the record.

3. It is admitted to the parties that a writ petition was filed before the learned single Judge for the following relief:

(i) issue a suitable writ, order or direction in the nature of Certiorari calling for the

record of the case and to quash the impugned orders dated 16/17.07.1998 and the order dated 31.08.1998 passed by the District Inspector of Schools, Dehradun and the Principal of Government Intermediate College, Quansi, district Dehradun respectively;

(ii) issue a suitable writ, order or direction in the nature of mandamus commanding the respondents not to interefere in the peaceful functioning of the petitioners as Class IV employee in their respective Government Intermediate College situated within Uttarakhand Region and also further ensure arrears of salary and current salary to the petitioner in accordance with the law.

(iii) Issue any suitable writ, order or direction in the nature as this Hon'ble Court may deem just and proper, in the facts and circumstances of the case and

(iv) Award costs of the writ petition to the petitioner throughout.

4. The appellant was appointed to Group 'D' post of Peon on adhoc basis by the Principal, Government Higher Secorndary School, Quansi (Dehradun) vide order dated 11.01.1997. The services of the appellant were subsequently regularized in the scale of Rs. 750/- to Rs. 940/- by means of order dated 27.09.1997 passed by the District Inspector of Schools, Dehradun. Pursuant to the regularization order dated 27.09.1997 the appellant jointed duties as regular

employee in the Government Higher Secontary School Quansi on 29.09.1997 and thereafter he was transferred by the D.I.O.S. on 12.12.1997 to the Government Higher Secondary School, Paundha. Thereafter he was transferred to other places. A complaint was made to the District Magistrate, Dehradun against the appointment of the appellant and thereafter the D.I.O.S., Dehradun cancelled the appointment of the appellant.

5. The petitioner pleaded in his petition that the cancellation order passed by the D.I.O.S. did not indicate the reason for cancellation of the appointment of the appellant and it was further pleaded that no opportunity of hearing, whatsoever, was given to the appellant at any stage while cancelling his appointment, as such, the order of cancellation of the appointment of the appellant was patently illegal and thus, can not be sustained in the eyes of law. The respondent had filed the counter affidavit in which they had stated that in the government orders it was clearly mentioned that prior to making any direct appointment on the post of Class ‘D’ category the names of legible candidates must be called from the Employment Exchange and it is also mentioned that without following the procedure none of the appointment would be made. It was further pleaded that in the present case the Principal had not adhered to the Government Orders issued in this behalf prior to making of the appointment of the appellant. His appointment was initially illegal and his appointment was made against the government orders, as such, no right had been conferred upon him for getting the regularization. His services could not have been regularized.

6. The learned Single Judge had held that the appointment of the appellant was made against the government orders. The appellant was illegally regularized, therefore, the appointment of the appellant was rightly cancelled by the D.I.O.S. Since the order of appointment as well as of the regularization of the appellant was void being against the government orders, therefore, it was nonest in the eyes of law and to rectify the same no opportunity was required to be given. The learned Single Judge further held that even if the opportunity would have been afforded to the appellant, the appellant could not have set out any case for the setting aside of the cancellation order as they could not deny successfully that the government orders were not followed in his appointment and regularization. The learned Single Judge dismissed the petition.

7. The learned counsel for the appellant contended that the learned Single Judge erred in holding that the adhoc appointment of the appellant was illegal and he was regularized dehros the government orders. He further contended that the learned Single Judge had also erred in holding that no opportunity was required to be given to the appellant before cancellation of his appointment & regularization. The learned counsel for the respondent refuted the contention.

8. It is admitted to the appellant that the D.I.O.S. had got the power of appointment in relation of class ‘D’ employees. The Principal had no power to appoint the class ‘D’ employee. In the case in hand the initial adhoc appointment had been made by the Principal of the college. It is also admitted that

the regularization of the appellant was itself being dehors the government orders. The learned counsel for the appellant could not demonstrate us any Government Order. under which his regularization was made. The State of U.P. framed the rules with regard to the regularization of Group 'D' adhoc employees in the year 1979. Rule 4 of the U.P. Regularization of Ad Hoc Appointments Rules 1979 provides as under:

> *"4**. Regularization of ad hoc appointments.-***
>
> *(1) Any person who-*
>
> *(i) was directly appointment on ad hoc basis before January 1, 1977 and is continuing in service as such on the date of commencement of these rules;*
>
> *(ii) Possessed requisite qualifications prescribed for regular appointment at the time of ad hoc appointment; and*
>
> *(iii) has completed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.*
>
> *(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.*

(3) For the purpose of Sub rule (1) the appointing authority shall constitute a selection committee.

(4) The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority, as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee along with the character rolls and such other records of the candidates as may be considered necessary to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub rule (4).

(6) The Selection Committee shall prepare a list of the selected candidates, the names in the list being arranged in order or seniority, and forward it to the appointing authority"

9. Thereafter State of Uttaranchal also framed the rules in the year 2002 wherein under Rule 4 of The Uttaranchal Regularization of Ad-Hoc Appointments Rules, 2002 it has been provided as under:

*"4**. Regularization of ad hoc appointments.-***

(1) Any person who-

(i) was directly appointment on ad hoc basis before June 30, 1998 and is continuing the service on the date of commencement of these rules;

(ii) Possessed requisite qualifications prescribed for regular appointment at the time of ad hoc appoint6ment; and

(iii) Has completed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of Sub rule (1) the appointing authority shall constitute a Selection Committee.

(4) The appointing authority shall prepare an eligibility list of the candidates arranged in order of seniority, as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee along with the character rolls and such other records of the candidates as may be considered necessary to assess their suitability."

10. Admittedly the appellant had been regularized on 27.09.1997 prior to the commencement of the Uttaranchal Regularization of Adhoc Appointments' Rules. Admittedly the appellant was not even regularized under Uttaranchal Adhoc Rules,2002. Admittedly the appellant was appointed on 11.01.1997. Thus, U.P. Rules 1979 were not applicable in the case of appellant. The appellant had not been regularized under any of the rules framed by the State Governments. It is provided in the government orders dated 10th August, 1992 annexed with the counter affidavit that prior to making any direct appointment on the post of category 'D' the names of legible candidates must be called from the Employment Exchange and it is also mentioned that without following the procedure none of the appointment will be made in the government departments. The Government has also framed rules of Group 'D' Employees Service Rules, 1985. These rules were applicable at the time of the appointment of the appellant. The appellant had not appointed according to the procedure established in the said rules. It is admitted to learned counsel for the appellant that the name of the appellant was not called from the Employment Exchange and prior to the appointment the list of the candidates waiting for the appointment under Dying-in-Harness Rules had also not been exhausted. The appointment of the appellant was also made without even advertisement of post or without taking any prior permission for the superior authorities of the department. Thus, the intial appointment was made against the provisions of the Rules and Regulations and Government Orders, as such, the appointment of the appellant was itself void an initio. The appellant was regularized by the D.I.O.S.

and he had no power to regularize the services of the appellant and the regularization was also made against the rules and orders of the government. Thus, such appointment of the appellant as well as the regularization was void ab initio and it does not confer any right to the appellant. The orders passed by the authorities with regard to the adhoc appointment as well as for the regularization were nonest in the eyes of law. If the orders were void ab initio the competent authority had rectified the same by cancelling the said other.

11. However, in S.L. Kapoor v. Jagmohan (supra) the Hon'ble Supreme Court has also observed as under:-

> *"As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs."*

12. In **M.C. Mehta v. Union of India 1999 (6) SCC 237,** the Hon'ble Supreme Court has laid down that there can be a certain situation in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary.

13. In **Aligarh Muslim University v. Mansoor Ali Khan AIR 2000 SC 2783** the Hon'ble Supreme Court considered the question whether on the facts of the case the employee can invoke the principle of natural justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. The Hon'ble Supreme Court referred to the decisions rendered in M.C. Mehta v. Union of India (supra), the exceptions laid down in S.L. Kapoor case (supra) and K.L. Tripathi v. State Bank of India AIR 1984 SC 273 wherein it has been laid down that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) has to be proved. The court has also placed reliance in the matter of **State Bank of Patiala v. S.K. Sharma 1996 SCC (L&S) 717 and Rajendra Singh V. State of M.P. 1996(3) SCC 364** where the principle has been laid down that there must have been some real prejudice to the complainant. There is no such thing as merely technical infringement of natural justice. The Court has approved this principle and examined the case of the employee in that light. In **Viveka Nand Sethi v. Chairman, J&K Bank Ltd 2005(5) SCC 337** the Hon'ble Supreme Court has held that the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straight-jacket formula. The cannot be applied in a vaccum without reference to the relevant facts and circumstances of the case. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be and empty formality. Even the principle of estoppels will apply.

14. In the case of State of **U.P. Vs. Neeraj Awasthi & others reported in 2006(1) SCC 667** the market committee of the Mandi Samiti made the appointments in-excess to the sanctioned strength. A resolution was passed by the Board proposing regularization of the services of those employees who had completed 1000 days of service. The Government issued the direction regarding the services of all such employees who had been irregularly appointed during the period from 1.4.1996 to 30.10.1997 be cancelled on last-come-first-go basis. Pursuant thereto or in furtherance of such directions issued by the State Government, the services of a large number of employees were terminated on or about 30.03.1999. Questioning the aforementioned directions of the State, an employee challenged the termination orders before the single bench of Allahabad High Court, who allowed the same holding that the termination order issued pursuant to the orders of the State Government was illegal. In similar writ petitions filed by other dismissed employees, the Division Bench of the High Court, Lucknow Bench had put its seal of approval to the order of the learned single Judge. A writ petition filed by other person, however, was dismissed by another Division Bench of the Allahabad High Court at Lucknow upholding the order of the State Government. The learned single Judge of the Allahabad High Court while allowing the writ petition had also held that the principle of natural justice had been ignored in terminating the services of such employees and, thus, the order of terminating the services of the writ petitioners were bad in law. When the matter came up before the Hon'ble Apex Court, it has been held that from the very inception the provisions of the Act

and regulations framed thereunder had been given a complete to-by. The provisions of the Act specifically mandate that all appointments must be made in terms of the provisions of the Regulations. The Hon'ble Apex has further held that the Board and the Market Committee of the Mandi Samities were bound by the Act, Rules and Regulations framed thereunder in making the appointments Statutory provisions as also the constitutional requirements were required to be complied with. The appointments have been made in flagrant violation of the statutory provisions. The Hon'ble Apex Court has further held that the orders passed by the learned single judge allowing the writ petitions which had been upheld by the learned division bench of the court does not lay down the law correctly and the judgment and order passed by the division bench of Lucknow Bench of the Allahabad High Court by which the order of the State Government was upheld, laid down the law correctly while dealing with the principle of natural justice. The Hon'ble Apex Court has further held as under:-

> *"47. If the employees are workmen within the purview of the U.P. Industrial Disputes Act, they are protected thereunder, Rules 42 and 43 of the U.P. Industrial Disputes Rules provide that before effecting any retrenchment in terms of the provisions of Section 6-N of the U.P. Industrial Disputes Act, the employees concerned would be entitled to a notice of one month or in lieu thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If such a retrenchment is effected under the Industrial Disputes Act, the question of complying*

with the principles of natural justice would not arise. The principle of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached. ***{See Suresh Chandra Verma (Dr) Vs. Chancellor, Nagpur University 1990(4) SCC 55, 1991 SCC (L&S) 194, Karnataka Public Service Commission Vs. B.M. Vijaya Shankar 1992(2) SCC 206, 1992 SCC (L&S) 362 and State of M.P. Vs. Shyama Parthhi 1996 (7) SCC}***

48. In ***Vikeka Nand Sethi Vs. Chairman, J&K Bank Ltd. 2005(5) SCC 337*** *it was held that "The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppels will apply.* ***{See Gurjeewan Garewal (Dr.) Vs. Dr. Sumitra Dash 2004(5) SCC 263}.*** *The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case."*

49. The High Court, therefore, must be held to have erred in law in holding that the principles of natural justice were required to be complied with."

15. In **Nazira Begum Lashkar and others Vs State of Assam-(2000)5 S.L.R. page 777,** the appellants claimed to have been appointed as Assistant Teachers of different

Primary schools in the State of Assam in the year 1990 but those appointments were cancelled by the State Government. The said appointments had been made though no posts were available and the appointments had been made not in accordance with the prescribed procedure. The order of cancellation had been assailed in the High Court by filing the writ petition. The Division Bench of the High Court sustained the order of the State Government and did not interfere with the order. In appeal, the Hon'ble Apex Court held that the Division Bench of the Gauhati High Court while hearing the petition issued a direction to the Government for holding an inquiry and submitting a report in view of the alleged gross mal-practices adopted in difference states. After the inquiry it was revealed that the said appointments had not been in accordance with the statutory rules and without any advertisements calling for applications. The Division Bench of the Gauhati High Court held that the initial appointment being dubious in nature the issuance of appointments letter will not confer any right on the appointees. The Apex Court had held as under:-

> *"14. .....while the matter was pending before the Division Bench, the Court was persuaded to appoint any Inquiry Committee, in view of the allegations of gross irregularities and illegalities committed in the matter of appointment of teachers indifferent primary schools in different Districts. The said Committee has gone into details and recorded findings that the provisions of the Recruitment Rules have not at all been followed. The High Court even has gone to the extent of*

recording a finding that there has been tampering of records and fabricating of documents. Since the appointments to the posts are governed by a set of statutory rules, and the prescribed procedure therein had not been followed and on the other hand appointments have been made indiscriminately, immediately after posts were allotted to different Districts at the behest of some unseen hands, such appointments would not confer any right on the appointee nor such appointee can claim even any equitable relief from any Court. That apart, the appointments stood annulled hardly after six months from the date of appointments and the appointees cannot claimed to be continuing for an unusual long period, so as to claim a humanitarian consideration in their case. The decisions cited by Mr. Parikh, in support of his contention, not only do not support his contention but on the other hand, appears to us to be against his contention. In Ashwani Kumar's case, 1997(2) SCC 1 this Court in no uncertain terms held that as the appointments had been made illegally and contrary to all recognized recruitment procedures and were highly arbitrary, the same were not binding on the State of Bihar. This court further went on to hold in the aforesaid case that the initial appointments having been made contrary to the statutory rules, the continuance of such

appointees must be held to be totally unauthorized and no right would accrue to the incumbent on that score. The Court had also held that it cannot be said that principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before their appointments were called and terminated. …… ……"

16. The Hon'ble Apex Court in **Pabitra Mohan Dash and others Vs State of Orissa and others- 2001 (1) S.L.R page 43** has observed as under:

"It is not disputed that with effect from 29.5.1977 Regulation 17 in the Board of Secondary Education has been brought into force which makes it obligatory for every institution to have a Headmaster who must be a trained graduate and must have 7 years of teaching experience as a trained graduate teacher. If subsequent to 29.5.1977 any appointment has been made to the post of Head master contrary to the aforesaid provisions of the Regulation then the said appointment would be invalid appointment and would not confer any right on the appointee. The expression 'approval' used in the second direction in Golakh Chandra Mohanty's case is referable to the approval contemplated under Rule 8(2)(b) of the Recruitment Rule and, therefore, if there has been an approval by the Directed then in such a case the appointment made after the prior approval

would not be invalidated. In our considered opinion the conclusion of the Special Bench that an approval of the Inspector is no approval in the eye of law is the correct position, and as such, does not require any interference by this Court."

17. In **State of M.P. and others Vs Shyama Pardhi and others, (1996) 7 S.C.C. page 118,** the District Medical Officer selected the respondents and sent them to the training of Auxiliary Nurse cum Midwife. After their successful completion of the training their appointments were made in the department. A notice was served upon them intimating that their selection for training was illegal and their services would be terminated with effect from 23.02.1994. The M.P. Public Health and family Welfare Department Non-Ministerial Class III Services Recruitment Rules, 1989 prescribed qualification for the appointment for Auxiliary Nurse cum Midwife 10+2 with Physics, Chemistry and Biology as qualitative subjects. Admittedly the respondents had not possessed that qualification. The respondents challenged the cancellation of their appointments before the Administrative Tribunal. The learned Tribunal had held that the respondent having been selected and undergone the training and the competent authority having duly appointed them, cancellation of their appointments without any opportunity was violative of the principles of natural justice and set aside the order of compentent authority. While allowing the appeal the Hon'ble Apex Court observed as under:

"It is now an admitted fact across the Bar the the respondent had not possessed the prerequisite qualification, namely, 10+2 with

Physics, Chemistry and Biology and subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question or violation of the principles of natural justice does not arise. The ratio of Shrawan Kumar Jha vs. State of Bihar 1991 SW(1) SCC 330 strongly relied on, has no application to the facts of this case. That was a case where the appellants possessed initial qualifications but they did not undergo the training. Since the appointment was set aside on the ground of want of training, this Court interfered with, directed the Government of reinstate them into service and further directed them to send the appellants, therein for training."

18. In **Kendriya Vidyalaya Sangathan and others Vs Ajay Kumar Das and other –(2002) 4 SCC 503,** the Assistant Commissioner of the appellant was terminated from the service. He filed a writ petition before the High Court in which an interim order was passed and ultimately the said petition was dismissed. It is revealed from the records, after taking advantage of the interim order passed by the High Court in the writ petition, the petitioner had issued various

appointment orders. An inquiry was conducted into certain allegations of irregularities regarding the appointment of teaching or non-teaching posts made by the said Assistant Commissioner and it was revealed that there were several irregularities in the matter of recruitment. Bearing this aspect in mind and considering the fact that appointment orders had been made by the Assistant Commissioner, when he had been dismissed, the authorities put an end to the services of the respondent Ajay Kumar Das and others by an order made by the competent authority. The order was challenged by the respondents before the Central Administrative Tribunal. The Tribunal set aside the order of the competent authority cancelling the said appointments made by the Assistant Commissioner on the ground that the respondents were not parties to the proceedings and their appointment had been cancelled without observing the principle of natural justice. The Hon'ble Apex Court while allowing the appeal of the Kendriya Vidyalaya Sangathan and upholding the cancellation of the appointment of the respondents observed as under:

> *"5. The narration of the facts made above, make it clear that the respondents were appointed by the said Dr. K.C. Rakesh Assistant Commissioner, Guwahati when his services had been terminated and his continuation in service itself was under a cloud and in an inquiry serious lapses had been noticed in the matter of recruitment. It is clear that if after the termination of services of the said Dr. K.C. Rakesh, the orders of appointment are issued, such orders are not valid. If such appointment orders are a nullity,*

the questions of observance of principle of natural justice would not arise. Even though, the respondents may not have been a party to the proceedings before the High court, it is clear that if the appointing authority itself did not have power to make appointment by reason of termination of his services, it is futile to contend that the respondents should have been served with notices in that regard. Dr. K.C. Rakesh issued appointment order on his services having been put an end to on 11-12-1997 by issuance of orders of appointment dated 13-12-1997/15-12-1997. On the pretext that the order of termination of his services had not been served upon him. It cannot be contended that the appointments of the respondents would be valid.

6. In the circumstances, we are of the view that neither the High Court not the Tribunal examined the matter in the right perspective. We, therefore, set aside the orders made by the High Court and the Tribunal and dismiss the original applications filed by the respondents before the Tribunal. These appeals will stand allowed accordingly. No costs."

19. In **Mohd. Sartaj and another Vs. State of U.P. and others-(2006) 2 S.C.C. page 315** the government of U.P. decided to appoint Urdu teachers in various districts in U.P. The minimum educational qualification for the said post

as per the advertisement was that the candidates should have either passed the Higher Secondary, Intermediate or equivalent examination thereto recognized by the government alongwith urdu as subject and possessed the Basic Teachers Certificate, Hindustani Teachers Certificate, Junior Teachers Certificate or certificate of teaching or equivalent thereto recognized by the government or any training equivalent thereto. The appellants had the High School degree as well as the Intermediate degree with urdu as one of the subjects alongwith urdu training certificate from Jamia Urdu, Aligarh. A list of selected candidates, which included the names of the appellants was issued and the appellants were required to join their duties in the respective schools within 15 days otherwise their appointment would automatically be deemed to be cancelled. The appellants joined their duties within the stipulated time. However, the Urdu Advisory Director issued direction regarding the cancellation of the appointment of the appellants on the ground that they did not possess the Basic Teachers Certificate. The appellants filed a writ petition before the High Court. The writ petition was dismissed. The Apex Court while dismissing the appeal had held that the appellants' case falls within the exception laid down in S.L. Kapoor' case (supra) and other supporting cases. In view of the lack of BTC qualification, the appellants could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and, therefore, no hearing was required before the cancellation of their appointment.

20. In view of the above proposition of law it is not disputed that the Principal had no power to make the initial appointment of the appellant. The appointing authority of Class ‘D’ employees was a D.I.O.S. The regularization was made by the D.I.O.S. himself but there was no rule prevailing at the time by which the D.I.O.S. had been conferred with the power to regularize class ‘D’ employees. It is admitted that there are two sets of rules issued by the State Governments, viz The U.P. Regularization Of Ad Hoc Appointments Rules 1979 and The Uttaranchal Regularization of Ad Hoc Appointments Rules, 2002. In between 1979 to 2002 there was no power conferred upon any to the Appointing authority to regularize any appointment made on ad hoc basis. Thus, the regularization was itself void ab initio. In this case neither the initial appointment nor the regularizations were done by following the prescribed procedure. On the contrary all efforts were made to bypass the recruitment procedure known to law which resulted in clear violation of Article 14 and 16 of the Constitution of India both at the initial stage as well as at the stage of regularization by way of recruitment of the illegal entrant. The so called regularizations and confirmations could not be relied on as shields to cover up initial illegal and void actions.

21. The learned counsel for the appellant relied upon a judgment of the Apex Court reported in **Sharwan Kumar Jha and others Vs State of Bihar and others- 1991 Supp.(1) SCC 330.** In this case the appellants were appointed as Assistant Teachers by District Superintendent of Education, Dhanbad. The Deputy Development Commissioner cancellation the appointment of the appellants on the ground

that the District Superintendent of Education had no authority to make the appointment. The Hon'ble Apex Court held that in the facts and circumstances of this case the appellants should have been give an opportunity of hearing before cancelling their appointments and set aside the order of the competent authority. In the case of Shyama Pardhi (supra) which I have discussed in the preceding para of the judgment, this case was distinguished on the ground that they were not disqualified to be appointed but they had not undergone the training and the appointment was set aside on the ground of want of training. The court has drawn a distinction between the initial disqualification for appointment and irregularity in the appointment and subsequent training for application of the principle of natural justice.

22. The learned counsel for the appellant also relied upon a judgment of the Apex Court reported in **Basudeo Tiwary Vs Sido Kanhu University and others- (1998) 8 SCC page 194.** In this case the appellant was working as a lecturer in a post sanctioned by the government in S.R.T. College at Dhamri as a lecturer in History. Thereafter the said college was taken over by the University and the Principle of the said College wanted his brother to be appointed as a lecturer of History in the College. On account of machination adopted by the principal, though the appellant had been appointed earlier he was relegated to the second position and thereafter his name was not even disclosed to the University after its take over. Thereafter the inspection team of the University visited the college and found that the appellant was in service prior to the date of taking over of the said college by the University and the report was submitted to the Syndicate of the

University. The syndicate appointed the regulation as lecturer in some of the college.. Thereafter a new University, i.e. Sido Kanhu University was carved out from the earlier one and the Vice Chancellor of the newly carved out University did not find the appointment of the appellant to be a valid one and his services were terminated without affording him any opportunity. The Hon'ble Apex Court had held that in these facts and circumstances of the case the appellant should have been given an opportunity before the termination. The aforesaid pronouncements relied upon by the appellant are not applicable in the facts and circumstances of this case. This case had a peculiar facts sot the Apex Court had granted an opportunity to the appointee.

23. In the case of **Secretary, State of Karnataka and others vs Umadevi and others reported in 2006 A.I.R. (SCW) 1991,** the Constitution Bench of the Apex Court has held that Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is not continued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was

not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment, do not acquire any right.

24. The Hon'ble Supreme Court further observed while directing the appointments, temporary or casual, be regularized or made permanent, Courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment, He accepts the employment with eyes open. It may be true that he is not in a position to bargain – not at arms length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone,it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casual got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.

25. It has further been observed that those decisions which run counter to the principle settled in this case or in which directions running counter to what the court had held herein would stand denuded of their status as precedent.

26. The principle of natural justice are not rigid or immutable and hence they can not be imprisoned in a

straight jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and can not be allowed to run wild. While interpreting legal provisions a Court of law can not be unmindful of the hard realities of life . The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practice rather than 'precedential'. In certain circumstances application of the principle of natural justice can be modified and even excluded. It is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose warrant exclusion of the right of hearing. Some times the principle of 'audi alteram partem' can not be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands. For example if a person is admitted in employment by a forged appointment with the connivance of any official of the establishment and after a month it is revealed that he is in service with the forged and fake appointment letter and he had drawn a month's salary. The retention of such employee even for an hour in the establishment would cause obstruction if the principal of natural justice is not excluded in such situation he would enjoy the fruits of fake and forged appointment letter for which he was not entitled for a moment. In such situation the right of hearing should be excluded.

27. In the instant case the appointment of the appellant itself war void ab initio and his regularization was also dehors the government rules and orders. No right and titled could be conferred upon him of being an employee of the said school, his appointment is non-est in the eyes of law, as such no right of hearing is required to the appellant.

28. We specifically asked to the learned counsel for the appellant that even if a notice was given to him what would be his reply to the said notice given to the appellant. The learned counsel for the appellant further stated before us that he would have taken only the plea which had been taken before this court and he would only say that he had been regularized, as such the regularization letter could not be cancelled. The learned single Judge had rightly held that even if the opportunity would have been given to the petitioner the petitioner could not have the caes for setting aside the cancellation order as he could not deny successfully that the Govt. orders were not followed in his appointment. The learned Single Judge further held that the observance of principle of natural justice could have been a futile exercise. We are completely in agreement with the findings recorded by the learned Single Judge.

29. After going throught the entire record we are of the considered opinion that the order of the appointment of the appellant was against the government orders and rules. The appointment was not made by the competent authority. We are also of the opinion that the regularization was also made dehors the rules and orders of the Government. Thus, the appointment order as well as regularization dehors the government orders it was void ab initio in the eyes of law. It

does not confer any right on the appellant. The order being null and void it also did not confer any right of hearing to the appellant.

30. In view of the foregoing discussion, we are of the view that the appeal devoids merit and is dismissed accordingly. There will be no order as to cost.

J.C.S. Rawat, J. **Rajeev Gupta, C.J.**

Dated: August 11,2006.

Negi.